

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5593 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MAHENDRAKUMAR J MEHTA

Versus

SONI MAHESH BABUBHAI & ANR.

Appearance:

MR DU SHAH for Petitioner

None present for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 11/12/96

ORAL JUDGEMENT

Heard learned counsel for the petitioner and perused the Special Civil Application. The petitioner filed regular civil suit No.114/82 in the court of Civil Judge, Junior Division, Rajula against the respondents, for recovery of Rs.16911/- due and payable by the respondent no.1 under the Octroi-Contract and against the respondent no.2 as surety. The suit has been contested by the respondent no.2 who has denied his surety as well

as the contents thereof. This document, the surety-bond was produced by the petitioner at mark 12/2 and tendered in evidence. The contention raised by respondent no.2 was that it was a bond as defined in sec.2(c) of the Bombay Stamp Act liable to duty under Schedule I Article 15 at the rate of 4% ad valorem and could not be admitted in evidence unless stamp-duty and penalty were paid. This contention raised by the respondent no.2 found favour by the trial court and under the impugned order the orders have been made for payment of duty.

This writ petition has been admitted on 14-11-1984 and the proceedings of the civil suit have been stayed for all these years. The order challenged in this writ petition by the petitioner arises from a civil suit. This court will not permit extraordinary jurisdiction to be converted into a civil court under ordinary law. When suit is pending, and pending suit the miscellaneous orders passed by the trial court cannot be challenged by way of a writ petition. Reference in this respect may have to the two decisions of the Supreme Court in the case of Swetamber S. Jain Samiti vs. Alleged Comtt. of Management reported in JT 1996 (3) SC 21 and in the case of Durgaprasad vs. Navinchandra reported in JT 1996 (3) SC 564.

In view of the aforesaid two decisions of the Supreme Court, this writ petition is not maintainable and the same is dismissed. Rule discharged. Interim relief granted by this court stands vacated.

zgs/-